REMARKS

In response to the Office Action dated October 30, 2007, the Assignee respectfully requests reconsideration based on the above claim amendments and on the following remarks. The Assignee respectfully submits that the pending claims distinguish over the cited documents to *Grauch* and *Batten*.

Claims 1-6, 9-23, and 26-28 are pending in this application. Claims 7-8 and 24-25 have been canceled without prejudice or disclaimer.

Rejection of Claims over *Grauch & Batten*

Claims 1, 6-7, 9-13, 15, 21-24, and 26-27 were rejected under 35 U.S.C. § 103 (a) as being allegedly obvious over WO 98/31114 to Grauch, *et al.* in view of WO 01/47156 to Batten, *et al.*

First, claims 7-8 and 24 have been canceled, so the rejection of these claims is moot.

Second, the proposed combination of *Grauch* and *Batten* does not obviate claims 1, 6, 9-13, 15, 21-23, and 26-27. These claims recite, or incorporate, features that are not taught or suggested by the combined teaching of *Grauch* with *Batten*. Independent claim 1, for example, recites "*associating a user classification to a set of parameters, the set of parameters determining membership in the user classification, the set of parameters including a minimum average weekly viewing time for a programming genre and shopping information associated with the programming genre*" (emphasis added). Support for such features may be found in the as-filed application at paragraphs [0043] – [0045]. Independent claim 1 also recites "*classifying the subscriber in the user classification when the subscriber's viewing time for the programming genre exceeds the minimum average weekly viewing time*" (emphasis added). Support for such features may be found in the as-filed application at paragraphs [0043] – [0045]. Independent claim 1 also recites "*classifying the subscriber in a plurality of user classifications, each*

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classification having corresponding parameters for determining membership in each classification" (emphasis added). Support for such features may be found in the as-filed application at paragraph [0046]. Independent claim 1 is reproduced below, and independent claim 15 recites similar features.

[01] A method, comprising:

collecting subscriber data about a subscriber's use of media programming, comprising

    i)   identifying a command of interest from the subscriber, and

    ii)   forming an event record that comprises the command of interest and a time associated with the command of interest;

merging the event record with data describing the media programming to form event timelines which describe the media programming selected by the subscriber over a period of time;

matching data from the event timelines with at least one relevant criteria describing which subscribers are desirable for receiving a selected advertisement; and

when data from the event timelines matches the at least one relevant criteria, then identifying the subscriber as a desirable subscriber to receive an advertisement;

associating a user classification to a set of parameters, the set of parameters determining membership in the user classification, the set of parameters including a minimum average weekly viewing time for a programming genre and shopping information associated with the programming genre;

classifying the subscriber in the user classification when the subscriber's viewing time for the programming genre exceeds the minimum average weekly viewing time;

classifying the subscriber in a plurality of user classifications, each classification having corresponding parameters for determining membership in each classification;

communicating the media programming to the user; and

when a match is defined between any user classification and the advertisement, then inserting the advertisement in the media programming.

Grauch and *Batten* cannot obviate all these features. *Grauch* discloses a system that combines event records and content data to form event timelines. *See* WO 98/31114 to Grauch,

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et al. at page 3, line 20 through page 4, line 7. *Batten* discloses a merge processor that classifies a user in a demographic group and then delivers an advertisement targeted to that demographic group. *See* WO 01/47156 to Batten, *et al.* at page 5, lines 1-7. *Batten*, in particular, matches a subscriber's profile to a demographic group. *See id.* at page 12, lines 9-10. "Generally, this analysis involves searching the event lists and subscriber data for patterns such as key words, *e.g.*, "action" movie or western movie, or repeatedly selected menu items, *e.g.*, do-it-yourself home improvement videos." *Id.* at page 12, lines 10-13. "As part of this search, merge processor 100 could count the number of key words cited, the number of menu item selections, or perhaps the amount of time the subscriber viewed <u>particular menus</u>." *Id.* at page 12, lines 13-15 (emphasis added). "[I]f the number of amount exceeded a certain threshold, [the processor] would assign the subscriber to a certain customer profile or demographic group. *Id.* at page 12, lines 15-17.

The Office must now realize that *Grauch* and *Batten* cannot obviate independent claims 1 and 15. The proposed combination of *Grauch* and *Batten* determines "the amount of time the subscriber viewed <u>particular menus</u>." *Id.* at page 12, lines 13-15 (emphasis added). That is, *Grauch* and *Batten* classifies a user according to <u>menu</u> viewing time. Independent claims 1 and 15, in contradistinction, "*associate[es] a user classification to ... a <u>minimum average weekly viewing time for a programming genre</u>*" (emphasis added). Independent claims 1 and 15 also classify users according to "<u>*shopping information associated with the programming genre*</u>" (emphasis added). Independent claim 1 also recites "*classifying the subscriber in the user classification when the subscriber's viewing time for the programming genre <u>exceeds the minimum average weekly viewing time</u>*" (emphasis added). Moreover, independent claims 1 and 15 also classify users "*in a <u>plurality</u> of user classifications, each classification having corresponding parameters for determining membership in each classification.*" Because *Grauch* and *Batten* are silent to at least these features, one of ordinary skill in the art would not think that independent claims 1 and 15 are obvious.

Claims 1, 6, 9-13, 15, 21-23, and 26-27, then, cannot be obvious. Independent claims 1 and 15 recite features that are not taught or suggested by the proposed combination of *Grauch*

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and *Batten*. The dependent claims incorporate these same features and recite additional features. One of ordinary skill in the art, then, would not think that these claims are obvious. Examiner Koenig is respectfully requested to remove the § 103 (a) rejection of these claims.

Rejection of Claims over *Grauch, Batten & Lawler*

Claims 8 and 25 were rejected under 35 U.S.C. § 103 (a) as being allegedly obvious over *Grauch* in view of *Batten* and further in view of U.S. Patent 5,758,259 to Lawler, *et al.* Claims 8 and 25, however, depend, respectively, from independent claims 1 and 15. Claims 8 and 25, then, incorporate the same distinguishing features discussed above. As the above paragraphs explained, *Grauch* and *Batten* are silent to many of the features recited by independent claims 1 and 15. *Lawler* does not cure these deficiencies. Table 2 of *Lawler* discloses a "count" of the "received programming" that matches each genre. *See, e.g.,* U.S. Patent 5,758,259 to Lawler, *et al.* at column 8, lines 1-3 (emphasis added). *Lawler*, then, merely counts the number of received programming for a genre — *Lawler* fails to teach or suggest "*associating a user classification to a set of parameters, ... including a minimum average weekly viewing time for a programming genre and shopping information associated with the programming genre*" (emphasis added). The proposed combination of *Grauch*, *Batten*, and *Lawler*, then, cannot obviate claims 8 and 25. Examiner Koenig is respectfully requested to remove the § 103 (a) rejection of these claims.

Rejection of Claims over *Grauch, Batten & Zigmond*

Claims 2 and 16 were rejected under 35 U.S.C. § 103 (a) as being allegedly obvious over *Grauch* in view of *Batten* and further in view of U.S. Patent 6,696,020 to Zigmond, *et al.* Claims 2 and 16, however, depend, respectively, from independent claims 1 and 15. Claims 2 and 16, then, incorporate the same distinguishing features discussed above. As the above paragraphs explained, *Grauch* and *Batten* are silent to many of the features recited by independent claims 1 and 15. *Zigmond* does not cure these deficiencies. Moreover, *Zigmond* does not teach what the Office alleges. *Zigmond* counts the number of times a user has seen an advertisement. *See* U.S. Patent 6,696,020 to Zigmond, *et al.* at column 13, lines 41-42. "[O]nce the advertisement has

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been displayed the desired number of times during a given time period, further display of the advertisement ... is <u>blocked</u>." *Id.* at column 13, lines 42-45 (emphasis added). Dependent claims 2 and 16, in contradistinction, recite "*classifying the subscriber when a predetermined number of advertisements is <u>exceeded</u>*" (emphasis added). So, the teachings of *Zigmond* would cause *Grauch* and *Batten* to <u>block</u> an advertisement, not "*classify*," as independent claims 1 and 15 recite. The proposed combination of *Grauch*, *Batten*, and *Zigmond*, then, cannot obviate independent claims 1 and 15, from which claims 8 and 25 depend. Examiner Koenig is respectfully requested to remove the § 103 (a) rejection of these claims.

Rejection of Claim 3

Claim 3 was rejected under 35 U.S.C. § 103 (a) as being allegedly obvious over *Grauch* in view of *Batten* and *Zigmond* and further in view of U.S. Patent Application Publication 2001/0004733 to Eldering.. Claim 3 depends from independent claim 1 and incorporates the same distinguishing. As the above paragraphs explained, the proposed combination of *Grauch*, *Batten*, and *Zigmond* cannot obviate independent claim 1, and *Eldering* does not cure these deficiencies. *Eldering* determines the number of times a consumer purchases a product. *See* U.S. Patent Application Publication 2001/0004733 to Eldering at paragraphs [0084] and [0085]. Still, though, the proposed combination of *Grauch*, *Batten*, *Zigmond*, and *Eldering* cannot obviate independent claim 1, from which claim 3 depends. Examiner Koenig is respectfully requested to remove the § 103 (a) rejection of this claim.

Rejection of Claims 4-5 & 17-20

Claims 4-5 and 17-20 were rejected under 35 U.S.C. § 103 (a) as being allegedly obvious over *Grauch* in view of *Batten* and further in view of *Eldering*. Again, though, these claims respectively depend from independent claims 1 and 15. As the above paragraph already explained, the proposed combination of *Grauch*, *Batten*, and *Eldering* cannot obviate independent claims 1 and 15, from which claims 4-5 and 17-20 depends. Examiner Koenig is respectfully requested to remove the § 103 (a) rejection of claims 4-5 and 17-20.
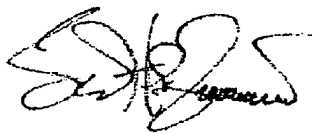
Rejection of Claims 14 & 28

Claims 14 and 28 were rejected under 35 U.S.C. § 103 (a) as being allegedly obvious over *Grauch* in view of *Batten* and further in view of U.S. Patent 6,177,931 to Alexander, *et al.* Claims 14 and 28, respectively, depend from independent claims 1 and 15. These claims, then, incorporate the same distinguishing features and recite additional features. As the above paragraphs explained, *Grauch* and *Batten* both fail to teach or suggest all the claimed features of independent claims 1 and 15. The patent to Alexander, *et al.* does not cure these deficiencies. The patent to Alexander, *et al.* discusses an electronic programming guide having advertising information. The combined teaching of *Grauch*, *Batten*, and *Alexander* still fails to teach or suggest the distinguishing features recited in independent claims 1 and 15 and incorporated into claims 14 and 28. Claims 14 and 28, then, cannot be obvious, so Examiner Koenig is respectfully requested to remove the § 103 (a) rejection of these claims.

If any issues remain outstanding, the Office is requested to contact the undersigned at (919) 469-2629 or *scott@scottzimmerman.com*.

Respectfully submitted,

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